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No. 80-

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, SOL FISHKO, LEO L. VOHSEN, *et al.*,
Petitioners,

v.

GERALD ROBERT COLLIER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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QUESTIONS PRESENTED

1. May a state impose tort damage liability upon an International Union for all assaults committed during a strike, in none of which any International officer or employee participated, merely because the International engaged in conduct clearly protected by the Constitution, the national labor laws and the decisions of this Court, such as espousing a position on the merits of a labor controversy and paying strike benefits, and some prior, occasional violent acts had occurred during the strike?

2. May the fact that an International Union discussed the issues involved in a strike in its newspapers, and sent a well-known definition of "scab" to the striking Local, be admitted in a state tort trial, as allegedly showing conspiratorial motive or participation of the International in an assault not committed by an International officer or employee, compatibly with the First Amendment, the national labor laws and the decisions of this Court?

3. May a state hold an International Union liable, on conspiracy, agency or ratification theories, for an assault not committed by an officer or employee of the International, because the International had not disciplined individual members who had committed prior acts of violence, or put their Local into trusteeship, compatibly with the Constitution, the national labor laws and the decisions of this Court?

PARTIES TO THE PROCEEDINGS

1. Gerald Robert Collier, the Plaintiff-Appellee below, is Respondent herein. The other parties were Defendants-Appellants below.

2. Petitioners are the International Printing and Graphic Communications Union, and Sol Fishko, Leo L. Vohsen, Raymond J. Boland, James H. Sampson, Don McCaughan,

Wade H. Moore, William C. Torrence, Burton F. Riley, Clarence G. Schroeder, Ron Tozzi and Michael P. McNally, in their official capacity as officers and directors of the International Union.

3. Other parties are Local No. 6 of the International Printing and Graphic Communications Union, and Raphael F. Collins, James A. Dugan, Jimmy Ingram and Charles S. Davis, who are officers and directors of the Local.

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OPINIONS AND JUDGMENTS BELOW

There were no opinions rendered below. The Order of the Supreme Court of Virginia denying the petition for writ of error was entered on May 30, 1980, and appears at

page 1a of the Appendix to this Petition. The Order of that Court denying the petition for rehearing was entered on August 28, 1980, and appears at page 2a of the Appendix.

The Order of Final Judgment of the Circuit Court for Arlington County, Virginia, was entered on July 27, 1979, and appears at page 3a of the Appendix.

JURISDICTION

The Order of the Supreme Court of Virginia denying review was entered on May 30, 1980 (App. 1a). A timely petition for rehearing was denied on August 28, 1980 (App. 2a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Supremacy Clause and the First, Fifth and Fourteenth Amendments of the United States Constitution; Sections 7 and 8(c) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 157 and 158(c); and Sections 101(a)(5) and 302 of the Labor-Management Reporting and Disclosure Act, as amended, 29 U.S.C. §§ 411(a)(5) and 462, are set out in the Appendix at pp. 6a-9a.

STATEMENT OF THE CASE

This Petition arises out of a $200,000 judgment for assault and battery, which an Arlington County, Virginia, jury awarded to Respondent Gerald Collier ("Collier") against Petitioner International Printing and Graphic Communications Union ("International"), and its officers and directors, and against International Printing and Graphic Communications Union, Local No. 6 ("Local 6"), and its officers and directors (Tr. 1780).[1] Collier alleged

[1] The trial Court, finding no evidence to support a verdict against the officers and directors personally, instructed the jury that no damages could run against them individually. It specified that the verdict nonetheless entered against them is to run against them only

that he was beaten in Spotsylvania County, Virginia, on March 12, 1976. As his assailants were hooded, Collier could not particularly identify them (Tr. 612); he sought to identify them generally as members of Local 6. His theory for recovery radiated from the fact that the day he was beaten was one of the more than 575 days since October 1, 1975, during which Local 6, which represented the pressroom and stereotype department employees, conducted a lawful strike against The Washington Post ("Post") (Tr. 85, 110, 286). Collier had been employed by the Post from March 8 through March 12, 1976, as a pressman trainee (Tr. 605-6).[2] Throughout the strike, the Post continued to operate having replaced the strikers (Tr. 105-6).

Collier presented no evidence of International involvement in or condonation of the assault upon him. Rather, he contended that its activities such as paying strike benefits and publishing information relating to the strike and the issues underlying it, coupled with the fact that occasional instances of violence had occurred during the Local 6 strike, rendered the International a "conspirator" with the striking Local and its members to commit violence, and rendered them "agents" of the International in whatever they did, so that the International assumed liability for this assault. Liability was sought to be attributed first to Local 6 members, then to the Local, on conspiracy and agency theories, and likewise then to the International. The trial Court disregarded or derogated the fact that all the activi-

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in their official capacities. (Tr. 1586-8, 1600-1, 1816). They are accordingly named as nominal Petitioners. "Tr." will be used herein to refer to the transcript from the trial in this proceeding, Collier v. International Printing and Graphic Communications Union, etc., et al., at Law No. 19975, Circuit Court for Arlington County, Virginia. "PX" will refer to plaintiff's exhibits and "Dep" will refer to depositions admitted into evidence in that trial.

[2] Previously, Collier had worked for the Wackenhut Corporation as a security guard for a former Local 6 member who continued to work at the Post during the strike (Tr. 281-3, 562-4).

ties engaged in by the International, which are described below, were clearly protected under the Constitution, the national labor laws and the decisions of this Court.

1. International Newspaper Discussions Of Strike Issues And Transmittal Of A Well-Known Definition of "Scab"

Collier's theory was that the strike was so important to the International that if it were not being won by peaceful means, the jury must be entitled to conclude that any and all acts of violence anywhere against working Post employees, during the period of time the strike was being carried on, evidenced a scheme to advance the goals of the strike and thus to benefit the International so as to render it liable for the violence. (Tr. 1627-31). By this device, Collier was allowed to introduce, and the jury to consider as demonstrating a conspiratorial scheme, evidence of all manner of normal Union activities. Collier introduced International newspaper articles [3] and testimony about the issues underlying the strike (*see, e.g.*, Tr. 44-6, 83-5, 403-8, PXs 9A-E). These expressions of views covered such matters as job security and the collective interest of affected employees, and nowhere suggested that any unlawful means should be used. Indeed, in an editorial in February, 1976, the International President decried violence and explained why it could not further Union objectives (Tr. 1167-71, PX 9E). Collier introduced no evidence as to how violence helped, rather than hindered, the efforts of Local 6 to win a satisfactory settlement.

On December 19, 1975, the International President sent the classic Jack London definition of "scab" to the President of Local 6 (Tr. 908, 916, PX 23). There is no evidence that the International knew or participated in what Local

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[3] Counsel for Collier argued to the court that "conspiracy could be shown by some of the newspaper articles . . . designed to actively dissuade the strike breakers . . . from going back to work" (Tr. 1362).

6 did with that definition (*see* Tr. 1374, 1442). Local 6 used the definition on "wanted posters" characterizing as "scabs" approximately seven former Local 6 members who had returned to work and not honored the strike (Tr. 1210-1, 1449, PX 24).[4] The posters were distributed in late December and early January, but not in March, when Collier was assaulted (Tr. 1441-5). None mentioned Collier (Tr. 1262). Local 6 would not have heeded any adverse comment of the International on the use of the posters (Tr. 1448). The trial judge permitted the posters to be introduced to show "motive and the means by which [both Unions] intended to accomplish this [wide ranging conspiracy to intimidate strikebreakers by violence]" (Tr. 33), and because "[the language] can be, however, incitement to violence, in the circumstances of this case" (Tr. Vol. VIII, 80). Acknowledging that "the evidence to tie the International to the strike is . . . somewhat thin", the trial judge singled out the use of this language in the posters as evidence that the jury was "entitled to take . . . into account" (Tr. 1373-4).

2. Other Lawful International Activities, Such As Paying Strike Benefits

The strike unquestionably was lawful, taking place after a collective bargaining agreement expired and having as its purpose obtaining job security, higher wages and other typical union objectives (*see, e.g.*, Tr. 83-5). Prior to the strike Local 6 applied for and received International Board of Directors' sanction to strike if the Local so chose, a prerequisite under the International Constitution if strike benefits were to be paid (Tr. 947, 1042-8). When the strike benefits were about to run out, an amendment was duly adopted to the International Constitution which extended the period for which benefits would be paid and increased the amount (Tr. 936-7, 1073). Moreover, the International

[4] The posters were originally 8½ by 11 inches. A sample poster appears at pp. 11a-12a of the Appendix.

maintained a coffee fund for the picketers (Tr. 1277). The International President also attempted unsuccessfully to arrange a meeting between Local 6 and Mrs. Katharine Graham of the Post (Tr. 1151). Also, during the strike, at the request of the Federal Mediation and Conciliation Service ("FMCS"), International officers attended some sessions of the FMCS with Local 6 and the Post (Tr. 887-8, 1157-61).

The evidence about these activities, all patently lawful, was admitted to show that the International was a co-conspirator of Local 6, its members and the assailants, or they were its agents, inasmuch as the International was thereby ratifying their conduct (*see, e.g.*, Tr. Vol. VIII, 96). There was no evidence of actual agreement to use violence or to engage in other wrongdoing.

3. Conduct Of Individuals And Local 6 Attributed to International Because The International Did Not Put Local 6 Into Trusteeship Or Discipline Its Members

The strike was called and conducted by Local 6, not the International (Tr. 1148-9). Local 6 did not want and thus did not receive the participation of the International in the strike or the collective bargaining to resolve it (Tr. 118, 1140-1, 1150-1, 1443). Nevertheless, the trial was conducted on the theory that the fact that the International might benefit if the strike were won justified a finding that any misconduct during the strike resulted from a conspiracy which the International had joined and was action by an agent of the International.

The jury instructions pertinently read:

> "If you believe . . . that the act of violence was fairly and naturally incident to the business of the defendants in their conducting the strike and was done by agents of the defendants with view [*sic*] to further the interest of the defendants, or from some other impulse or emotion which naturally grew out of

> . . . the strike . . . then such act of the assailants was within the scope of their employment . . . .
>
> • • •
>
> "If you find from the evidence that the violence surrounding the strike was part of a common scheme or plan, or and that assault and battery on plaintiff Gerald Collier was a part of that plan, and if you further find that the defendant International Union ratified a part of the scheme or plan of violence, then you must find that the International Union ratified the whole scheme or plan including the assault and battery on the plaintiff . . . .
>
> "If . . . the Local Union was an agent of the International . . . and . . . received knowledge of the violent acts . . . then you must find that the International Union had knowledge of the same acts . . ." (Tr. 1609-12).

By this means, testimony about the following activities of individuals was admitted into evidence against the International: some damage was done to machinery in the pressroom of the Post and a foreman was injured on October 1, 1975, the day the strike began (Tr. 88, 1506-11); and over a period of many months, there were approximately ten other, scattered, incidents of violence or harassment against Post employees by members of Local 6 or unidentified persons.[5] The most recent incident before the one in-

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[5] On October 1, November 3 and December 13, 1975, episodes each more than a month apart, a single Post employee was hit at locations near the Post (Tr. 143-5, 185, 313-6). On January 6, 1976, 100-150 people, mostly members of Local 6, picketed and yelled in front of the Post. During the course of the evening, a large window was broken and people leaving the building were harassed (Tr. 287-9, 332-40). There was no evidence that anyone was hit or injured.

On the next day, January 7, some pressmen swore at four Post executives sitting at a cafeteria a block or so from the Post. One executive was hit in the back of the head and another was spit upon (Tr. 340-5). On January 11, 1976, a Post employee

volving Collier had occurred two months earlier.[6] Some members of Local 6 pleaded guilty in April 1977 to misdemeanors arising from the October 1, 1975 incident (Tr. 961, 1657).

Although no evidence was presented that any International officer or employee was involved in, present at, or approved any of these acts, the jury was instructed that the International was obligated to repudiate them or else could be liable for all violence against Post employees (Tr. 1611). Evidence that the International did not put Local 6 into trusteeship and did not expel or disavow Local members charged with wrongdoing—despite the doubtful authority of the International to do so consistently with the Labor-Management Reporting and Disclosure Act[7]—was admitted to show that the International ratified violence or conspired to commit it (Tr. 1068, 1656). Similarly considered relevant was evidence about other International conduct, most of which occurred long after the assault against Collier: that the International continued to pay strike benefits to some persons for a short period after they were convicted of misdemeanors in April 1977 (Tr. 286,

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was hit by a man she later identified as someone carrying a sign she assumed supported the strike (Mitchler Dep., 6, 11-3). Also on January 11, 1976, a former Local 6 member was chased by two or three carloads of people, at least two of whom, he said, were Local 6 members (Ferrell Dep., 7-11).

On an unspecified date a former Local 6 member allegedly was harassed in a courtroom in Arlington by Local 6 members, one of whom, he claimed, had brought a frivolous lawsuit against him (Tr. 651-9). He also said a marble came through a window of his home in Woodbridge, Virginia, in February or March, 1976 (Tr. 663-4).

[6] With the possible exception of the marble thrown in February or March by an unknown person. *See* n. 5, *supra.*

[7] The trial judge declined to instruct the jury concerning the Union's powers under the Labor-Management Reporting and Disclosure Act because he deemed that Act too "vague" to comprehend (Tr. Vol. VIII, 106).

1657); that some officers of the International contributed to the Local 6 defense fund for its members (Tr. 960-1, 1232); that the International President wrote to the sentencing judge on April 26, 1977, recommending clemency (Tr. 963, PX 28), and in November 1977 helped a Local 6 member, who had been sentenced to work release, to transfer to a Local in another state (Tr. 1005-15).

The jury found Local 6, the International and the officers and directors of both, liable for compensatory damages of $200,000 (Tr. 1780). The trial judge dismissed the Complaint against the officers and directors of both unions in their individual capacities, and later entered judgment against them "only in their representative capacities . . . because I don't think any individual wrongdoing by these people such as to incur individual tort liability was ever shown in the evidence" (Tr. 1587-8, 1816; see Final Judgment, Appendix, pp. 3a-5a). He denied the International's motion to set aside the verdict (Appendix, pp. 3a-5a). The Virginia Supreme Court denied the International's petition for writ of error and its petition for rehearing, but stayed the execution of the Judgment until final determination of the case by this Court.

FEDERAL QUESTIONS RAISED

Petitioners seek review of issues involving the First, Fifth and Fourteenth Amendments, and the Supremacy Clause, of the Constitution of the United States, and the federal labor laws, upon which were based the timely and valid objections below that were overruled. All these Federal Laws protect conduct that the judgment below punishes and inhibits.

Prior to trial, Petitioners filed a motion *in limine* "to exclude the use in evidence of certain 'scab' posters, references to protected union speech and related activities" on First Amendment and Federal preemption grounds.

The trial judge refused to exclude the posters saying, *inter alia:*

> "[T]his is a conspiracy case . . . .
>
> "Evidence of this wide-ranging conspiracy is to be shown by the utterance of the defendants. These posters are such utterances. This is to show their motive and the means by which they intended to accomplish this . . . .
>
> "Therefore, I don't think that the federal cases have any applicability. Obviously one can make constitutionally protected utterances which have an effect of doing somebody some harm. If you do that, you are going to have to pay the price if the harm results" (Tr. 33).

The Court added that "[t]he federal statutes can pre-empt all they like but if it becomes material to a case it is admissible here" (Tr. 65).

Throughout the trial, Petitioners objected to the admission of the posters and newspapers on First Amendment and Federal preemption grounds (*see, e.g.,* Tr. 405-6, 666, 892-3, 901-2, Vol. VIII, 86-92); and to the admission of lawful union conduct on the basis of Federal preemption (*see, e.g.,* Tr. 62-3 (bargaining position); Tr. 294-7, 926-7, 972, 1278-82, 1298-9, 1445-6 (strike benefits); Tr. 1277-8 (coffee fund); Tr. 1341-2 (generally)). The Court consistently overruled the objections; a typical ruling was:

> "But it seems to me that the payment of the strike benefits with knowledge of unlawful violence could be deemed ratification even though it is normal union practice" (Tr. 930).

Petitioners objected on Federal law grounds that an agency relationship between the International and the Local had not been established, (*see, e.g.,* Tr. 1334-51, Vol. VIII, 77-9); and that failure to discipline and related International conduct could not be evidence of ratification, (*see e.g.,* Tr. 1097-8 (clemency letter); Tr. 410-1, 419 (traveling cards); Tr. 1343-8; Vol. VIII, 25 (duty to disavow); Tr.

Vol. VIII, 107 (trusteeship)). The Court consistently overruled these objections also.

Petitioners objected to the broad conspiracy theory under which the case was being tried, arguing, *inter alia:*

> "it is a due process requirement, that you just can't make out some vague tort of conspiracy that the Union has taken a position . . . . [It is] an unlawful interference with federal labor precepts . . ." (Tr. 1325-6; *see also* Tr. 876-8, Vol. VIII, 91-2, 101).

The Court refused to strike the conspiracy count, ruling:

> "the ultimate test of conspirators is . . . by their fruits you shall know them . . . .
>
> "[T]he jury could find . . . that the International Union saw this strike as another in a step of encroachments by publishers which it was almost desperate to fend off that it whipped up through its trade publication a rather high degree of indignation among its members about the strike.
>
> "That it emphasized to its members the intranigeance [*sic*] of the Post by refusal to bargain rationally, or fairly.
>
> "And finally, when the strike broke out it rendered such aid and comfort on the local as it could including passing along the idea for the outrageous language of Jack London . . ." (Tr. 1370-1).

In response to Petitioners' argument that "[y]ou have clear First Amendment problems, clear labor law problems," the trial judge said, "[w]hy tax this jury with them? They really haven't got a labor law case. They have an assault and battery case" (Tr. Vol. VIII, 87). While insisting that this was merely "an assault and battery" case, the trial judge expressed the view that:

> "I think public policy should demand—I am not one to enunciate what public policy is—it should demand in continuation of labor peace that unions be subject to scrutiny . . . . That is why you have litigation like this . . ." (Tr. 1573).

Petitioners' renewed preemption objections on the motion to set aside the verdict were overruled (Tr. 1795-802, 1812-3).

In its Petition for Writ of Error, Petitioners asked the Supreme Court of Virginia to review the case because it involved the issue:

> "Whether an International Union, whose involvement in a strike has been its responsive effort to bring the parties together and its carrying on its normal union function can be held liable for an intentional assault by alleged members of the striking local" (p. 22).

Quoting from *Mine Workers* v. *Gibbs,* 383 U.S. 715, 738 (1966), Petitioners urged "that it would be inconsistent with the fabric of national labor policy" to impose tort liability on the basis of lawful union activities or failure to disavow violence (Petition 23-26). Citing *Letter Carriers* v. *Austin,* 418 U.S. 264 (1974), and *Gibbs,* Petitioners also presented the question:

> "Whether the plaintiff, by showing other unrelated, sporadic acts of misconduct, and protected union activity, proved the International conspired to injure Collier" (Petition 27-28).

The Petition for Rehearing argued that a finding of liability was preempted; that the verdict against the International violated its autonomy established by federal labor law under *Carbon Fuel Co.* v. *Mine Workers,* 444 U.S. 212 (1979); that introduction of certain evidence violated the First Amendment and *Letter Carriers* v. *Austin, supra;* and that the conspiracy theory used at trial violated Due Process and Federal labor law (pp. 1-3).

The Supreme Court of Virginia denied the original petition with one sentence, "[f]inding no reversible error . . . the court refuses the petition . . ."; and it denied the petition for rehearing without opinion (App. 1a-2a).

REASONS FOR GRANTING THE WRIT

I. The State Of Virginia, By The Judgment Below, Has Punished Petitioners For, And Thus Regulated And Inhibited, The Exercise Of Rights Protected By The Constitution, The National Labor Laws And The Decisions Of This Court.

This case presents the spectacle of a state imposing tort liability upon an International Union for exercising rights set out in and safeguarded by the Constitution of the United States and the National Labor Relations Act, 29 U.S.C. §§ 141 *et seq.*, in defiance of many decisions of this Court. The right to publish views and engage in vigorous discussions of the merits of a labor dispute; the right freely to associate and to engage in and support concerted activities; and the right of an International Union to conduct its normal, peaceful, utterly legitimate activities, without having state tort liabilities imposed for violence which none of its officers or employees committed, authorized or approved: Each of these basic rights has been violated by the judgment below.

By this case, Virginia has served notice upon all Union members that their International Union may be punished by tort damage verdicts, authorized and invited by state law vicarious liability rules of conspiracy, agency and ratification, applicable in cases involving Unions; and supported by nothing more than a conjunction of the existence of a strike in which some previous acts of violence have occurred, and the International's exercise of rights clearly protected by the Constitution and the national labor laws. Short of frank outlawry of strikes and Union activities, a more effective restraint upon them is difficult to conceive. Such state action is condemned by the many decisions of this Court striking down judgments which punish or inhibit the free exercise of those rights. A cloud of doubt will confuse and diminish those decisions and those rights, if the judgment below is permitted to go unreviewed.

1. *Freedom of Expression.* Petitioners' expressions of

views on the issues in the strike against the Post were admitted into evidence and, indeed, formed a keystone of the evidence which led to the jury verdict. They were admitted to show that the International considered the issues to be of great importance, so that the jury could infer from those expressions that the International must have participated in a scheme to use violence as a means for winning the strike, despite the lack of evidence of wrongdoing by any of its officers or employees.

Petitioners had a perfect right to communicate their views about those issues in the International newspaper and otherwise. The state had no right to permit those expressions to constitute a principal basis for holding the International liable. The First Amendment can be as effectively subverted by a state's imposing tort liability for the expression of unpopular views, as by its imposing licensing requirements or criminal penalties. *See, e.g., Thomas* v. *Collins,* 323 U.S. 516 (1945). So too can the national labor laws and policies be subverted by such liability:

> "The potential for undue interference with federal regulations would be intolerable if state tort recoveries could be based on the type of robust language and clash of strong personalities that may be commonplace in various labor contexts." *Farmer* v. *Carpenters,* 430 U.S. 290, 305-306 (1977); *see also Sears, Roebuck & Co.* v. *Carpenters,* 436 U.S. 180, 197, n. 25 (1978).

The posters prepared by Local 6—even if admissible against Petitioners; but see pp. 17-19, *infra*—are identically embraced by the First Amendment.[8] They convey no imminent likelihood of violence. This Court has already held "that publication of Jack London's rhetoric is equally entitled to the protection of the federal labor laws." *Letter Carriers* v. *Austin,* 418 U.S. 264, 283 (1974). In reversing a

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[8] The trial Court clearly regarded that the posters constituted an "integral part of the case," as Collier's counsel viewed them (Tr. 19). *See* Tr. 1373-4, quoted above at p. 5, *supra.*

Virginia libel judgment sustained by the Court below, this Court declared:

> "Jack London's 'definition of a scab' is merely rhetorical hyperbole, a lusty and imaginative expression of the contempt felt by union members towards those who refuse to join . . . . It has become a familiar piece of trade union literature; according to undisputed testimony in this case, it has been published countless times in union publications over the past 30 years or more." 418 U.S. at 285-286.

To sanction a money judgment against the International —to be paid from the dues of ordinary working people— because it discussed the strike issues and sent the Jack London rhetoric to Local 6 will deter debate during labor disputes and is "plainly inconsistent with the union's justifiable reliance on the protection of federal law." *Austin, supra,* 418 U.S. at 286.[9] The plain defiance of this definitive ruling of this Court alone warrants review and reversal.

2. *Protected Union Activities.* The strike by Local 6 was a lawful one over new contract terms, and the limited activities of the International relating to it were peaceful

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[9] Although *Austin* was based on Federal labor policy and therefore did not reach the First Amendment contentions, 418 U.S. at 283, n.15, there can be little doubt that the newspapers and the posters were protected by the First Amendment, and that the Virginia courts' reliance on them as evidencing illegal motivations offends the First Amendment. As this Court held in *Hess* v. *Indiana,* 414 U.S. 105, 109 (1973):

> "Since there was no evidence or rational inference from the import of the language, that [the] words were intended to produce, and likely to produce, *imminent* disorder, those words could not be punished by the State" (emphasis in original).

See also Brandenburg v. *Ohio,* 395 U.S. 444, 447 (1969); *Terminiello* v. *Chicago,* 337 U.S. 1, 4 (1949).

and protected by law. The principal International activities were paying and later extending strike benefits; providing a coffee fund for picketers; attempting to arrange a meeting between Local 6 and management; and sending observers to some meetings conducted by the Federal Mediation and Conciliation Service at its request in its effort to resolve the strike. All such activities are protected by Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, as well as the Constitution itself.

"[T]here is a constitutional objection to state-court interference with conduct actually protected by the Act." *Sears, Roebuck & Co.* v. *Carpenters*, 436 U.S. 180, 199 (1978); *Farmer* v. *Carpenters*, 430 U.S. 290, 296 (1977). As this Court recognized in *San Diego Building Unions* v. *Garmon*, 359 U.S. 236, 247 (1959), "[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy."

State tort judgments have been sustained in labor disputes only in circumstances utterly distinguishable from those at bar. In those involving violence, the torts unquestionably have been perpetrated or participated in by an officer or employee of the union charged. *See Automobile Workers* v. *Russell*, 356 U.S. 634 (1958); *United Construction Workers* v. *Laburnum Corp.*, 347 U.S. 656 (1954). There is no such evidence against Petitioners. Moreover, state judgments have been considered sustainable only if "adjudicated without regard to the merits of the underlying labor controversy." *Farmer, supra*, 430 U.S. at 300. The thrust of Collier's case was that the job security and manning requirement demands for which Local 6 was striking reflected "featherbedding" (*see, e.g.*, Tr. 1623); for that reason, loss of the strike would cause loss of membership (*see, e.g.*, Tr. 1627-9); therefore, the strike was so important to the International that it must be charged with condoning violence to win the strike (*see, e.g.*, Tr. 1630, 1642). This case was certainly not adjudicated "without regard to the

merits of the underlying labor controversy"; rather, those merits were central to Collier's proof.

The state rules of law employed below obviously were not "so structured and administered that in virtually all instances it is safe to presume that judicial supervision will not disserve the interests promoted by the federal labor statutes." *Farmer, supra,* 430 U.S. at 297, *quoting Motor Coach Employees* v. *Lockridge,* 403 U.S. 274, 297-298 (1971); *see also Linn* v. *Plant Guard Workers,* 383 U.S. 53 (1966) (state libel judgments in labor disputes permissible only if based on actual malice). The judgment below cannot be reconciled with these decisions of this Court. The narrow exceptions permitting state judgments, meticulously carved by this Court, do not admit this case.

In *Mine Workers* v. *Gibbs,* 383 U.S. 715, 735 (1966), this Court left open the question, squarely presented by this case, whether "the conspiracy concept could be and was kept within limits proper to the application of state tort law under the preemption doctrine . . . ." That concept ran rampant in this case. The judgment below cannot survive legal appraisal by the *Gibbs* touchstone.

3. *Vicarious Liability of International.* The strike was called and conducted by Local 6, not the International. The International did not control the strike activities of Local 6 or its members or strangers who occasionally harassed Post employees. Violence was not in the scope of the duties of Local 6 or its members, and the International did not encourage, authorize or participate in it. Quite to the contrary, the only evidence of its attitude toward violence was that after the initial October 1, 1975 incident it urged the Local 6 President to prevent any reoccurrence of such activities (Tr. 1038, 1153), and in February 1976 its editorial again advised members that violence was counterproductive (Tr. 1054, 1167-71, PX 9E). Despite this, the Court permitted the jury to find that the unidentified assailants were agents of the International if they were acting "to further

the interest of the defendants or from some other impulse or emotion which naturally grew out of . . . an attempt to perform the strike of the defendants . . . . (Tr. 1609).

Holding the International vicariously liable here violated this Court's teaching in *Carbon Fuel Co.* v. *Mine Workers,* 444 U.S. 212, 217 (1979), reaffirming that the "very loose test" of "any person acting in the interest" is insufficient to infer agency in cases involving labor disputes. Albeit not arising from a state judgment, *Carbon Fuel* relied upon the same generally applicable common-law principles of agency purportedly relied upon in this case.

The State Court here also imposed a duty on the International to discipline members of Local 6 and to put Local 6 into trusteeship, holding that failure to take such action was relevant proof of conspiracy to commit, or ratification of, violence, including violence of which the International was not even aware.[10] That holding, too, conflicts with *Carbon Fuel*:

> "Petitioner makes the distinct argument that we should hold the International liable for its *own* failure to respond to the local's strike. In the face of Congress' clear statement of the limits of an international union's legal responsibility for the acts of one of its local unions, it would be anomalous to hold that an international is nonetheless liable for its failure to take certain steps in response to actions of the local. Such

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[10] The State Court also permitted Collier to argue that because officers of the International contributed to Local 6's legal defense fund, recommended clemency to the judge for Local 6 members and helped one sentenced to work release transfer to another Local, the International was liable for all violence. But surely such conduct falls entirely and easily within the ambit of protected concerted activity. In any event, contributors to a legal defense fund do not thereby become liable for all misconduct of the beneficiary of the fund; nor do those who offer a helping hand to one whom society has already punished thereby become liable for the latter's improper conduct.

a rule would pierce the shield that Congress took such care to construct." 444 U.S. at 217-218, (emphasis in original).

The judgment below likewise cannot be harmonized with this Court's holding in *Mine Workers* v. *Gibbs, supra,* 383 U.S. at 738-739, that ratification of wrongdoing cannot be inferred from an international union's "involv[ing] itself in the dispute after the violence had occurred, or from the fact that it carried on some normal union functions, such as provision of strike relief" and that "[t]here can be no rigid requirement that a union affirmatively disavow such unlawful acts as may previously have occurred." [11]

As the Sixth Circuit has said:

> "Irresponsible or violent acts by individual workers (or by agents provocateur) if automatically attributable to the union on the scene could, of course, serve to destroy it. But such vicarious liability is repugnant to due process of law." *North American Coal Corp* v. *Local 2262, UMWA,* 497 F.2d 459, 466 (6th Cir. 1974).

II. This Case Presents Issues Of General Importance Directed To The Relationship Between State And Federal Policies And Interests Which Merit The Consideration Of This Court.

This case may well mark the furthest that a state court has gone, since the enactment in the 1930's of the laws embodying the national policy of free collective bargaining, in inflicting tort liability upon an International Union

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[11] The Courts below further departed from Federal law, in this regard, by refusing to consider, or instruct the jury concerning, the strictures of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 *et seq.*, which prohibits unions from disciplining members without specific procedures, 29 U.S.C. § 411(a)(5), and limits an international's ability to put a local into trusteeship, 29 U.S.C. § 462.

that did not engage in the tortious conduct but, rather, exercised federally protected rights. As the many cases cited illustrate, delineating the principles of Federal-state accommodation in the industrial relations area is a task so vital that it fully justifies the attention of this Court.

The judgment below effectively makes the International Union the absolute guarantor against assaults during a strike, if the International engages in any activities in support of the strike and there has been some prior misconduct. Once such misconduct occurs, the judgment below demands that the International not only cease any support for the ongoing strike and any participation in efforts to resolve it, but also turn immediately to disciplinary measures against those who may have engaged in misconduct, even though they have already been punished by the law, and against the Local conducting the legitimate strike, or else stand in peril of heavy tort judgments.

Whether a state may impose such heavy burdens upon normal, federally protected Union activity is an issue worthy of adjudication by this Court. If the judgment below is indeed derisive of rights embraced by the Constitution and the national labor policy, and defiantly contrary to such decisions of this Court as *Austin, Garmon, Farmer, Carbon Fuel* and *Gibbs,* it should not be left standing.

CONCLUSION

For the reasons stated above, the Petition should be granted.

Respectfully submitted,

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APPENDIX

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th day of May, 1980.

Record No. 791597

Circuit Court No. L-19975

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, *Appellant,*

against

GERALD ROBERT COLLIER, *Appellee.*

From the Circuit Court of Arlington County

Finding no reversible error in the judgment complained of, the court refuses the petition for appeal filed in the above-styled case.

A Copy,
Teste:

Allen L. Lucy, Clerk

By:

/s/ Richard R. Buriak
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 28th day of August, 1980

Record No. 791597

Circuit Court No. L-19975

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, *Appellant,*

against

GERALD ROBERT COLLIER, *Appellee.*

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 30th day of May, 1980, and grant a rehearing thereof, the prayer of said petition is denied.

A Copy,
Teste:

Allen L. Lucy, Clerk

By:

David B. Such
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

AT LAW NO. 19975

GERALD ROBERT COLLIER, *Plaintiff*,

VS.

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, ET AL., *Defendants*.

FINAL JUDGMENT

THIS CAUSE CAME TO BE HEARD upon the pleadings, the trial before the Court and a jury, on June 12, 13, 14, 15, 18, 19, 20, 21, 22, and 25, 1979, the record of which is incorported herein by reference, and upon the verdict of the jury in favor of the plaintiff against the defendants International Printing and Graphic Communications Union and its officers and directors, and the International Printing and Graphic Communications Union, Local No. 6, and its officers and directors, in the amount of $200,000.00, and upon the motion of the International Printing and Graphic Communications Union to set aside the verdict and upon the motion of the International Printing and Graphic Communications Union, Local No. 6, for entry of judgment non obstanto verdicto, and upon argument thereon, which is also incorporated herein by reference, and upon consideration thereof.

IT APPEARING TO THE COURT that the verdict of the jury is proper and consistent with the law and evidence presented herein, and that the motions of the defendants are without merit, it is therefore

ORDERED AND ADJUDGED that the motion of the International Printing and Graphic Communications Union to set

aside the verdict be, and hereby is, denied and overruled; and it is further

ORDERED AND ADJUDGED that the motion of the International Printing and Graphic Communications Union, Local No. 6, for a judgment non obstanto verdicto be, and hereby is, denied and overruled; and it is further

ORDERED AND ADJUDGED that judgment be, and hereby is, entered in favor of the plaintiff, Gerald Robert Collier, against the defendants herein, to-wit: the International Printing and Graphic Communications Union, Sol Fishko, Leo L. Vohsen, Raymond J. Boland, James H. Sampson, Don McCaughan, Wade H. Moore, William C. Torrence, Burton F. Riley, Clarence G. Schroeder, Ron Tozzi, Michael P. McNally, in their capacity as officers and directors of the International Printing and Graphic Communications Union, and not individually, the International Printing and Graphic Communications Union, Local No. 6, Raphael F. Collins, James A. Dugan, Jimmy Ingram, and Charles S. Davis, in their capacity as officers and directors of the International Printing and Graphic Communications Union, Local No. 6, and not individually, in the amount of Two Hundred Thousand Dollars and no/100 ($200,000.00), plus taxable costs and interest at eight (8%) percent from July 27, 1979.

Upon motion of Defendants, it is ORDERED that execution of judgment be, and hereby is, suspended provided an appeal bond, as prescribed by Virginia Code Section 8.01-676, is filed in the Clerk's Office of this Court in the amount of $210,000.00, with surety, such bond to be filed within 30 days from July 27, 1979.

AND IT IS FURTHER ORDERED that the transcript of the trial proceedings be made part of the record in this case.

AND IT IS FURTHER ORDERED that the clerk of this Court

be and hereby is directed to issue certified copies of this Final Judgment forthwith, to all counsel of record.

AND THIS CAUSE IS FINAL.

ENTERED this the 27th day of July, 1979.

/s/ Charles S. Russell
CHARLES S. RUSSELL,
JUDGE

UNITED STATES CONSTITUTIONAL PROVISIONS AND AMENDMENTS

Article VI, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

National Labor Relations Act, as amended, 29 U.S.C. §§ 141 et seq.

Section 7, 29 U.S.C. § 157

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Section 8(c), 29 U.S.C. § 158(c)

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

Labor-Management Reporting and Disclosure Act, as amended, 29 U.S.C. §§ 401 et seq.

Section 101(a)(5), 29 U.S.C. § 411(a)(5)

Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

Section 302. 29 U.S.C. § 462

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

-WANTED-



For STRIKEBREAKING
AND
SCABBING

For 30 Pieces of Silver
He Sold His Soul to
The Washington Post!!

ED ALEXANDER

FTER BEING ON STRIKE FOR 70 DAYS,
/ITH FULL PAY FROM THE COMPANY,
LUS FULL STRIKE BENEFITS, HE CHOSE
O BE A SCAB. MAY GOD HAVE MERCY
N HIS ROTTEN "SOUL"

PREVIOUS PAGE WAS BLANK

DEFINITION OF A
"S C A B"

After God had finished the rattlesnake, the toad and the vampire, he had some awful substance left with which he made a **SCAB.** A **SCAB** is a two-legged animal with a corkscrew soul, a water-logged brain and a combination backbone made of jelly and glue. Where others have hearts — he carries a tumor of rotten principles.

When a **SCAB** comes down the street men turn their backs and angels weep in heaven, and the devil shuts the gates of hell to keep him out. No man has the right to **SCAB** as long as there is a pool of water deep enough to drown his body in, or a rope long enough to hang his carcass with. Judas Iscariot was a gentleman compared with a **SCAB.** For betraying his master, he had character enough to hang himself. **A SCAB HASN'T!!**

Esau sold his birthright for a mess of pottage. Judas Iscariot sold his savior for thirty pieces of silver. Benedict Arnold sold his country for a promise of a commission in the British army. The modern **STRIKEBREAKER** sells his birthright, his country, his wife, his children and his fellow-men for an unfulfilled promise from his employer, trust or corporation.

Esau was a traitor to himself. Judas Iscariot was a traitor to his God. Benedict Arnold was a traitor to his country.

A STRIKEBREAKER IS A TRAITOR TO HIS GOD, HIS COUNTRY, HIS FAMILY AND HIS CLASS!!!

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Supreme Court U.S.
FILED
JAN 16 1981

No. 80-858
No. 80-859

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, SOL FISHKO, LEO L. VOHSEN, *et al.*,

Petitioners,

v.

GERALD ROBERT COLLIER,

Respondent.

and

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, LOCAL NO. 6, *et al.*,

Petitioners,

v.

GERALD ROBERT COLLIER,

Respondent.

CONSOLIDATED BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-858
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INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, SOL FISHKO, LEO L. VOHSEN, *et al.*,

Petitioners,

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GERALD ROBERT COLLIER,

Respondent.

and

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, LOCAL NO. 6, *et al.*,

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v.

GERALD ROBERT COLLIER,

Respondent.

CONSOLIDATED BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

I. INTRODUCTION AND STATEMENT OF THE CASE

Petitioners are seeking a review of a reward of damages against them for the brutal beating of respondent, Gerald R. Collier. In the course of a turbulent labor dispute at the Washington Post, Mr. Collier was severaly injured as the result of a concerted pattern of violence by

the petitioner Unions. Mr. Collier brought a tort action in the Circuit Court for the County of Arlington, Virginia, seeking recovery on the basis of conspiracy and respondeat superior. After a two-week trial, the jury returned a verdict of $200,000 in favor of Mr. Collier. Petitioners sought the right to appeal to the Supreme Court of Virginia. Their Petitions for Appeal were denied. Likewise, petitioner for rehearing to the Supreme Court of Virginia were denied.

Petitioners have failed to present any valid basis for the granting of a writ of certiorari to the Supreme Court of Virginia. First, petitioners failed to properly raise the federal questions presented to this Court in their Petitions for Appeal to the Supreme Court of Virginia. The Supreme Court of Virginia found no reversable error, and denied their petitions. Second, the petitions present no federal questions which have not already been decided by this Court. In deciding those questions, this Court has established rules of law which are consistent with the rulings below, and would require the affirmance of the award of damages to Mr. Collier.

II. STATEMENT OF FACTS

On March 12, 1976, during the course of a strike by petitioners at the Washington Post, Gerald R. Collier, a pressman trainee, was brutally assaulted by five men, who wrapped him in barbed wire, slashed him with a knife, dragged him face down across a country road, and hit him on the knee and head with a pipe, leaving Collier permanently and severely disabled with traumatic epilepsy and other neurological and psychological injuries. The assault occurred during an especially violent strike conducted by members of the International Printing and Graphic Communications Union (hereinafter "Interna-

tional"), and the International Printing and Graphic Communications Union, Local No. 6 (hereinafter "Local 6").

A. Collier Presented Evidence of a Continuing Pattern of Violence by Petitioners, Designed to Obtain a Union Victory.

The strike against the Washington Post was marked by a pattern of violence, obviously designed to intimidate employees from working at the Post. The strike began in the early morning of October 1, 1975, when the union members sabotaged all nine presses, set two presses on fire and beat up the night foreman, James Hover (Tr. 89, 1506-09). Later that day, a member of the union threw a block of wood in the face of a Post reporter, Kathy Sawyer (Tr. 151-55). As part of this pattern of violence, the respondent, Gerald R. Collier, was attacked and beaten.

The strike against the Washington Post had potential far-reaching effects on the International and Local 6. One of the major issues of the strike was the Post's proposal to reduce manning in the pressroom by some 40 to 46% (Tr. 1243). This strike was key for the International since it involved a large, prestigious, eastern newspaper. If the union were forced to cut almost in half the work force in the pressroom, it could have serious effects on the union's membership. The union was interested in maintaining as many of its members as possible in the pressroom. Although the ultimate goal of the International union may have been proper, the means by which the union sought to achieve that goal were unlawful.

After the initial outburst of violence, a continuous pattern of violence developed. Several weeks after the strike began, a Post reporter who crossed the picket line, Jules Witcover, was struck in the face by a striking

pressman (Tr. 142-44). As a result of union setbacks, the strike violence escalated in December of 1975. After several months of bitter negotiations, the Post, in early December, 1975, declared an impasse and began to hire permanent replacements for the striking pressmen. On the evening of December 13, after a large rally to protest this action, a Post employee was attacked by several men wearing ski masks, who stated that they were going to "teach this Chinaman where he belongs" (the victim had been called "Chinaman" by strikers when he crossed through the picket line) (Tr. 313-21).

A number of pressmen quit the union and returned to work in late December (Tr. 304). The union put out "wanted" posters, which accused these men of being scabs, and then defined scabs in the most despicable way, stating that "no man has a right to scab as long as there is a pool of water deep enough to drown his body in, or a rope long enough to hang his carcass with". (PX 18, 24). This language was suggested to the Local 6 by the president of the International. The posters were hung in the neighborhoods where the returnees lived (Tr. 1210-11). Herbert Kinard, one of the members who returned to work, noticed a group of strikers distributing posters concerning him near his home in Woodbridge, Virginia, in early January, 1976. Several days later, while he was inside the Arlington County Courthouse, he was harassed and threatened by 13 strikers, including one Eugene O'Sullivan. The harassment reached such an extent that it was necessary to obtain a police escort in order that he and his wife could leave the courthouse (Tr. 646-58). Another former union member who returned to work, Roy Ferrell, was followed home one night to Falls Church, Virginia, by two carloads of union members (including O'Sullivan), who tried to run him off the road.

Later, Ferrell was assaulted in the face by a member of the pressmen's union after he had left work (Tr. 325).

Pursuant to its statement that replacements would be hired, the Post hired a number of permanent employees to replace the striking union members. On January 5, 1976, Post and union negotiators met to discuss the employment rights of the new non-union workers. The following night, a riot broke out in front of the Post building. Among the 100-150 rioting pressmen were the top Local 6 officers (Tr. 287-88, 336). Windows were broken, employees were threatened and at least two Post employees, Jane Brooks and another lady, had their cars "rocked" as they tried to drive home by a group of abusive strikers (Tr. 288-89). The following day, a striker slugged one Post executive in the back of the head, and another striker spit upon one Post executive and challenged him to a fight (Tr. 340-45). Two weeks later, a telephone operator was smashed in the face and called a "cocksucking rat bitch" by a man she later identified as one of the picketers (the second time she saw him, he said, "Well, I guess that telephone operator didn't learn her lesson." (Tr. 169).

These are examples of the pattern of harassment and violence employed by the union for the obvious purpose of intimidating Post employees from working at the struck newspaper. One of the victims of this pattern was the respondent, Gerald Collier. People were constantly threatened, windows broken, and tires slashed. The Post found it necessary to transport many of its employees by shuttle bus and some key employees by helicopters. Several persons were provided with bodyguards (Tr. 281, 283-75, 297).

B. Collier was Attacked and Injured in the Course of the Union's Pattern of Violence.

The pattern of violence continued long after the involvement of the International. Gerald R. Collier was severely injured as part of the pattern of violence, in a concerted effort to cripple or kill him, because he made the mistake of going to work for the Post during the labor dispute.

Collier was originally hired in November of 1975 as a guard for James Hover (a night foreman at the Washington Post who was assaulted on the first day of the strike) and his family at the Hover farm near Beaverdam, Virginia (Tr. 562-63). In the middle of December, two union members, Fred Tweedlie and a bearded individual, Eugene O'Sullivan, arrived at the farm in a car decorated with strike banners and belligerently demanded to see Hover. Collier told them Hover was not there, and after putting his hand on his gun, told them to leave (Tr. 564-47).

On March 8, 1976, Collier began to work at the Washington Post as a pressman trainee. On March 12, Collier left work around 8:15 p.m. Crossing the picket line, he declined to accept a leaflet offered to him by one of the union members who then told him, "that's all right, you son of a bitch, we'll get you, too." (Tr. 607). Collier got into his car, and proceeded to drive to his home near Massaponax, Virginia, some 60 miles south of Washington. As he crossed the 14th Street Bridge, he was tailgated and nudged by an automobile, containing three figures. Collier continued driving on I-95 until he was near Stafford, Virginia, where a car with three figures in it again pulled up behind him and tried to run him off the road. Frightened, Collier sped up to 100 mph., hoping that he would be stopped by a policeman (Tr. 607-09).

At the Thornburg exit, Collier left the Interstate and drove about 2½ miles down a country road. Suddenly, a small, red, pick-up truck pulled in front of him and stopped, and a car with three passengers came up behind his car and sandwiched him in. Two men, wearing ski masks, emerged from the truck and caught Collier and began wrapping his neck and arms in barbed wire. Three men, also wearing ski masks, came over from the car. One of them said, "That's the son of a bitch who ran a couple of our members off the Hover farm." (Tr. 611). One of the three, who had a beard, then came up to Collier and said, "Yes, that's the son of a bitch." (Tr. 613). [Eugene O'Sullivan, as noted above, had a beard; he had also signed the daily strike list for March 12, 1976 (PX 42)].

The five men then began to hit Collier with their fists and with a pipe to his knee, which caused him to buckle to the ground. They took out a long, bladed knife, similar to the knives used in the pressroom, and cut him along his arms and chest (Tr. 614-15). Then, they flipped him over and, while one forced Collier's head and chest down, dragged him across the tar and gravel road. This torture continued until one of the men said, "Al, Al, for Christ sakes, don't hit him anymore. We're going to be late to Jimmy's farm." (Tr. 616). [Collier had earlier testified that Hover was called "Jimmy" by the pressmen, while his friends and family called him "Jack". (Tr. 604)]. The assailants hit Collier with a pipe and threw him in a ditch.

Collier was subsequently hospitalized. He has not worked since the assault. Substantial medical testimony was introduced to prove that Collier has severe and permanent neurological and psychological injuries as a result of the assault. One of the manifestations of his traumatic epilepsy which developed from the beating is a seizure in which Collier seems to relive the assault,

grasping as if to pull the wire from around his neck (Tr. 516-17).

C. The Union's Involvement.

Both the International and the Local 6 were well aware of the violence attending the strike, but did nothing to stop it. For example, James Dugan, president of Local 6, testified that he knew of the sabotage in the pressroom, and the assaults of Hover and the Post reporters, but that he did nothing to discipline the perpetrators (Tr. 1218). In fact, the officers of Local 6 were held in contempt of court for their involvement in the January 6, 1976 rally. Collings, the secretary/treasurer of Local 6, learned of the Collier incident, but did nothing to investigate it or to discipline those involved (Tr. 1460).

Sol Fishko, the president of the International, was aware of the violence from the very beginning of the strike. The International was actively involved in the strike. According to Sol Fishko, there was a concerted effort on the part of newspaper publishers to provoke strikers and to reduce manning in pressrooms across the country (Tr. 883-84). Fishko attempted to contact the publisher of the Post after the strike broke out (PX 33). International officers and representatives attended negotiating sessions (Tr. 91-92; 1183), and spoke at rallies (PX 9c). The International sanctioned the strike, paid certain expenses and paid strike benefits (PX 12, 38, 39). Indeed, strike benefits, under the International's Constitution, originally would only be provided for 26 weeks (PX 7). However, just after the Post announced that it would hire permanent replacements, the Board of Directors of the International passed a resolution for a referendum to increase strike benefits and to extend them as long as the strike was actively prosecuted (PX 9c). The referendum was scheduled for March 1, 1976, which not by happen-

stance, was the same day that the strike benefits would have otherwise terminated for the Post strikers. The referendum passed.

All the while, the International knew of the violence occuring during the strike. Fishko and the International secretary/treasurer, Burton Riley, knew about the damage to the presses and many of the assaults (Tr. 948, 952; 1183). Again, even though there was a recognition of the International's obligation to take some sort of action to halt the violence, there was no investigation or disciplinary action taken against either Local 6 or its members (Tr. 949-50). Fishko merely made self-righteous statements and editorials. By not investigating, discouraging or doing anything to deter the violence, the International union acquiesed to the course of violence. In fact, the International's only real action was to give support to the Local 6 and the violence by its members. The entire course of conduct by the International showed a ratification and authorization of the pattern of violence.

The International did not merely play a passive role, but contributed to the situation. For example, after it was known that a number of union members were going back to work at the Post, Fishko received a letter from a leader of another union, enclosing the definition of a scab, containing the language that "no man has a right to scab as long as there is a pool of water deep enough to drown his body in, or a rope long enough to hang his carcass with". Fishko passed a copy of the letter on to Local 6 on December 19, 1975 (PX 23). The pressmen printed the "Wanted" posters, which included the definition of a scab (Tr. 1447-48). On December 24, an assistant of Fishko's picked up from strike headquarters, several copies of the "Wanted" posters which incorporated the vitriolic language which Fishko had conveyed to

Dugan (PX 24). The International had, in effect, poured fuel on the fire of violence, as is evidenced by the harassment of Kinard (see discussion, supra p. 4).

On July 14, 1976, fifteen members of the union were indicted for their violent conduct on the first day of the strike. The International's officers became actively involved in their defense—endorsing a legal defense committee (PX 27), communicating with some of the indicted men (PX 31), writing letters to the Judge of the case (PX 13, 14), and generally keeping in close contact with the case (PX 32). Notwithstanding a policy that members convicted of violent crimes should not receive strike benefits (Tr. 1183), the International continued to pay benefits to eight striking members (the others had transferred to jobs elsewhere), even after they had pled guilty to violent misconduct during the course of the strike and been sentenced (PX 27, 40, 41, 51). Furthermore, even though President Fishko stated that a member convicted of violent conduct should be expelled (Tr. 1054), none of the fifteen who pled guilty were expelled or disciplined (Tr. 1237-38). Indeed, the International gave special benefits to the members who were guilty of strike violence. One of them, Eugene O'Sullivan, who was involved in the assaults on Kinard, Ferrell and apparently Collier, and who pled guilty with regard to an assault on Hover (PX 55), received special, and unprecedented, assistance from Fishko, who obtained a job for O'Sullivan at a newspaper in Newark (Tr. 1252, PX 30).

III. ARGUMENT

A. The Petition Must be Denied Since Petitioners Failed to Properly Raise Federal Questions to the Supreme Court of Virginia.

Petitioners have attempted to raise questions of violation of the United States Constitution, federal labor laws and violation of the holdings in other decisions by this Court as a basis for granting a writ of certiorari. These issues were not properly raised in the Petitions for Appeal to the Supreme Court of Virginia and cannot now be raised in their Petitions for Certiorari.

> "The rule is firmly established and has been frequently reiterated, that the jurisdiction of this Court to reexamine the final judgment of a state court . . . cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing the case here from such court intended to assert a Federal right.

Michigan Sugar Company v. Dix, 185 U.S. 112 (1902). *See Standard-Vacuum Oil Co. v. United States*, 339 U.S. 157 (1950); *Congress of Industrial Organizations v. McAdory*, 325 U.S. 472 (1945); *McCullough v. Kammerer Corporation*, 323 U.S. 327 (1945). Even if a federal issue is raised at the trial, this Court cannot examine the federal issue unless it was also presented to the state appellate court. *Haiwassee River Power Co. v. Carolina-Tennessee Power Co.*, 252 U.S. 341 (1920); *Winona & St. P. Land Co. v. State of Minnesota,* 159 U.S. 540 (1895).

The federal questions raised in the petitions were not properly or adequately raised to the Supreme Court of Virginia. The International's petition to the Supreme Court of Virginia does not even cite the federal statutes it

relies upon in its Petition for Writ of Certiorari; nor does it cite the federal constitution. The International's petition to the Supreme Court of Virginia only gives a short reference to the federal labor laws—which were not the same issues raised in their present petition. The Petition by Local 6 to the Supreme Court of Virginia makes no citation of the federal statutes or constitution.

Petitioners only made casual references to any federal decisions in their petitions to the Supreme Court of Virginia. These references were made in connection with state law arguments on the sufficiency of the evidence. Petitioners are now attempting to expand on these references, and claim that the federal questions were presented to the Supreme Court of Virginia. The majority of the federal issues presented in the "Federal Questions Raised" portions of the Petitions for Certiorari may have been raised at the trial court, but were not raised on appeal to the Supreme Court of Virginia. Other state court issues such as the propriety of the jury instructions have been raised for the first time in these petitions. Issues cannot be presented to this Court that were not raised to the Supreme Court of Virginia. For this reason alone the Petitions for Certiorari must be denied.

B. Federal Law Does Not Pre-empt the State's Power to Adjudicate Claims for Tort Damages Resulting from Violence in Labor Disputes.

Petitioners' argument appears to be that the state has improperly regulated their conduct by imposing state tort liability for injuries sustained by Mr. Collier during the strike. Petitioners further argue that evidence of appropriate union activity was improperly admitted to prove the liability because the activity is protected under Federal Labor Law. Their arguments are without merit.

This Court has consistently held that a state is free to impose tort liability for union violence. A state has a compelling interest in the maintenance of domestic peace. In the absence of a clear congressional direction, states retain jurisdiction in providing remedies for wrongs due to violent activity during labor disputes. *San Diego Building Trades Council Millmen's Union Local 2020 v. Garmon*, 359 U.S. 230, 247 (1959); *United Construction Workers v. Laburnum Const. Corp.*, 347 U.S. 656 (1954).

> This Court has consistently recognized the right of States to deal with violence and threats of violence appearing in labor disputes, sustaining a variety of remedial measures against the contention that state law was pre-empted by the passage of federal labor legislation. Allen-Bradley Local No. 1111, etc. v. Wisconsin Employment Relations Board, 315 U.S. 740, 62 S.Ct. 820, 86 L.Ed. 1154; United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656, 74 S.Ct. 833, 98 L.Ed. 1025; United Automobile Aircraft and Agricultural Implement Workers v. Wisconsin Employment Relations Board, 351 U.S. 266, 76 S.Ct. 794, 100 L.Ed. 1162; Youngdahl v. Rainfair, Inc., 355 U.S. 131, 78 S.Ct. 206, 2 L.Ed.2d 151; International Union, United Automobile, Aircraft and Agr. Implement Workers v. Russell, 356 U.S. 634, 78 S.Ct. 932, 2 L.Ed.2d 1030.

United Mine Workers v. Gibbs, 383 U.S. 715, 729 (1966).

Congress has neither provided nor suggested any substitution for traditional state court procedures for collecting damages for injuries caused by tortious conduct of labor unions. This Court has stated, "for us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners immunity from

liability for their tortious conduct." *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 664 (1954). "If the employee's common-law rights of action against a union tortfeasor are to be cut off, that would in effect grant to unions substantial immunity from the consequences of mass picketing or coercion such as employed during the strike in the present case." *Automobile Workers v. Russell*, 356 U.S. 634, 645 (1958).

Russell involved a situation which was substantially similar to the case at bar. In *Russell*, an employee brought an action to recover for lost pay when, due to force of numbers, threats of bodily harm and damage to property, the employee was unable to get to work. The Court held that the Federal Labor Law did not preclude a common-law action for tort damages. Likewise, the case at bar involves an action for damages resulting from union violence.

The imposition of state tort damages for labor violence will not "regulate" labor union activity. ". . . there is no risk that state damages actions will fetter the exercise of rights protected by the NLRA." *Farmer v. United Brotherhood of Carpenters and Joiners of America, Local 25*, 430 U.S. 290, 299 (1977). Since petitioners argue that the imposition of liability for Mr. Collier's injuries amounted to a regulation of their conduct, and since this Court has ruled that civil tort damage for violence does not infringe on protected rights, the petitioners claims are without any basis in law.

1. The Federal Labor Laws do not Limit the Introduction of Evidence of Union Activities During a Violent Strike.

Since Federal Labor Law does not pre-empt a state from imposing liability for violence, nothing in the acts preclude or limit the state's imposition of damages resulting from violence, or from permitting proof of union activities to sustain a damage award. Various union activities may be used to show the union's involvement in the violence. This Court has recognized that "peaceful" union acts may be part of a pattern of violence, and subject to state control. "Acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence." *Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies,* 312 U.S. 287, 292 (1941). *See, Youngsdahl v. Rainfair,* 355 U.S. 131 (1957).

Merely because labor unions are involved in strike violence does not limit a state court from admitting evidence of the international and local unions' involvement in that violence, or limit evidence of motive for conducting the violence. Labor unions are treated like any other organization when it comes to liability for violence. *United Const. Workers v. Laburnum Const. Corp.,* 347 U.S. 656, 669 (1954). The unions lose any protection that they may have been afforded by the Federal Labor Laws when they engage in violence. Senate Report No. 105, 80th Cong., 1st Sess. 50 (engaging in violence "at least deprive[s] the violators of any protection furnished by the Wagner Act"). When the petitioners engaged in violent actions, they stepped outside the bounds of the Federal Labor Laws, and lost any protection they may have enjoyed. Petitioners have lost no right to free speech, when such speech was used to prove their

involvement in the violence. The state court properly permitted Collier to prove the violence and the petitioners' involvement in the violence.

Petitioners contend that Collier improperly attempted to prove the underlying controversy. Rather than attempt to prove the merits of the strike, Collier avoided any assertions as to the merits of the underlying controversy. Evidence was properly admitted to show agency, ratification, authorization and conspiracy. Inevitably, these items were proved, in part, by showing some union activity. Petitioners appear to suggest that there should be no reference to any union activity. Such a rule would be untenable, and, since union violence by definition involves union activity, petitioners' rule would effectively preclude any proof of union involvement in violence, and would immunize unions from liability.

2. *Evidence of Union Activity Conducted as Part of a Conspiracy to Conduct a Violent Strike is Admissible.*

The state court properly allowed Gerald Collier to introduce evidence of various union activities to show motive, conspiracy and agency. Because of the nature of a conspiracy, proof of the conspiracy may necessarily encompass proof of a lawful goal, or proof of certain lawful activity conducted as part of the conspiracy. Furthermore, what is properly admissible evidence in the trial of a conspiracy would appear to be a state law question, not a question for the Supreme Court under Federal law.

A conspiracy is the combination of two or more individuals to do an unlawful or criminal act, or to do a lawful act by criminal or unlawful means. *Duplex Printing Press Co. v. Deering,* 254 U.S. 443 (1921); *Truax v. Corrigan,* 257 U.S. 312 (1921). In the present case, the

petitioner unions attempted to accomplish a lawful and permissible labor strike in order to prevail in a labor dispute, but they used unlawful means of persuading or intimidating non-striking workers—specifically, they committed a violent attack upon Mr. Collier.

Unlawful conspiracies commonly consist in part of conduct entirely lawful in itself. *Shulman v. Burlington Industries, Inc.*, 255 F.Supp. 847 (S.D.N.Y. 1966). Moreover, circumstantial evidence may provide adequate proof of conspiracy, *Industrial Bldg. Materials v. Interchemical Corp.*, 437 F.2d 1336 (9th Cir. 1970); *Hoffman-LaRoche, Inc. v. Greenberg*, 447 F.2d 872 (7th Cir. 1971); *Schoenkopf v. Brown & Williamson Tobacco Corp.*, 483 F.Supp. 1185 (E.D. Pa. 1980), and agreement among co-conspirators may be inferred from acts of the parties. *Oltman v. Miller*, 407 F.2d 376 (7th Cir. 1969). Lawful or protected activities of unions should be admissible as evidence of conspiracy to commit an unlawful or unprotected act. Acts committed in effectuation of a conspiracy need not be illegal in themselves and acts which may be wholly innocent may yet be part of and tend to accomplish an illegal conspiracy. *See Lessig v. Tidewater Oil Co.*, 327 F.2d 459 (9th Cir. 1964), *cert. denied*, 377 U.S. 993; *Brunswick Corp. v. Vineberg*, 370 F.2d 605 (5th Cir. 1967); *Winkler-Kock Engineering Co. v. Universal Oil Products Co.*, 79 F.Supp. 1013 (S.D.N.Y. 1948). It is for this reason that acts which are legal in themselves lose that character when they become constituent elements of an unlawful scheme. *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962). Obviously, since the nature of a conspiracy encompasses both lawful and unlawful acts, respondent had a right to prove both lawful and unlawful acts when they were conducted as part of a conspiracy.

C. The International Union is Vicariously Liable for the Acts of Members of the Local Union.

The International argues in its petition that, on the basis of the facts in this case, it should not be held vicariously liable for the assault by its members on Gerald Collier. The test for determination of vicarious liability of labor unions is based upon the Common Law. "[T]he common law of agency shall govern in determining whether any person is acting as an 'agent' of another person". *Carbon Fuel Company v. United Mine Workers of America,* 100 S.Ct. 410, 414 (1979).

There can be no question but that an international union may be held liable for labor violence under an agency or respondeat superior theory. In *United Const. Workers v. Laburnum Const. Corp.,* 194 Va. 872, 75 S.E.2d 694 (1953) *aff'd,* 347 U.S. 656 (1954), the court held that the very nature of the organization of the international union in the case was sufficient to show that the local union was an agent of the international union. *See International Union of Operating Engineers v. Lassitter,* 295 So.2d 634 (Fla. App. 1974) *rev'd on other grounds* 314 So.2d 761 (Fla. 1975) (international liable under agency theory for acts of agent of local); *United Brotherhood of Carpenters v. Humphreys,* 203 Va. 781, 127 S.E.2d 98 (1962); *International Brotherhood of Teamsters v. United States,* 275 F.2d 610 (4th Cir. 1960); *McDaniel v. Textile Workers Union of America,* 254 S.W.2d 1, 36 Tenn. App. 236 (1952); *International Brotherhood of Boiler Makers v. Newman,* 116 Ga. App. 590, 158 S.E.2d 298 (1967).

Ample evidence was presented in this case to show the agency relationship between the assaulting members of the union and the local and international unions. The International's constitution in this case, by itself, estab-

lishes the agency relationship between petitioners and the violent union members. *See International Brotherhood of Teamsters v. United States,* 275 F.2d 610 (4th Cir. 1960); *International Union of Operating Engineers v. Lassitter,* 295 So.2d 634 (Fla. App. 1974), *rev'd on other grounds,* 314 So.2d 761 (1975). The International's constitution evidences a wide degree of control over the members, including controls over membership; suspending members for violations of the laws, limiting travel of members; control over conduct in the press-room; and requiring certain actions by its members to obtain strike benefits (PX 7). In addition to the constitution, other evidence was introduced to show the agency relationship. The union recognized its obligation to expel members for picket line violence, and to proceed against a local who declared for violence. The International had powerful sanctions which it could impose on its violent members by cutting off strike benefits or expelling the members. Rather than impose these sanctions, the International union gave specific strike benefits to the violent individuals, and gave extraordinary treatment to one of the individuals involved in much of the violence (see discussion, supra p. 10). The union's actions established both a ratification of the pattern of violence and an authorization of future violence by its acquiescence to the course of violence.

During the course of the violence, the International union suggested to the local union that the pattern of violence continue. As part of the definition of a "scab" sent by the president of the International to the Local 6, the following is found: "No man has the right to scab as long as there is a pool of water deep enough to drown his body in or a rope long enough to hang his carcass." This language was incorporated by the Local 6 in the course of a violent strike, into "Wanted" posters. In the context of

this case, little else could have been done by the International union to encourage the use of violence.

The petitioners argue that it was a violation of their First Amendment rights to use the strike posters as evidence of the petitioners' participation in the violence. There is no First Amendment protection for speech which indicates the union's approval of violence in the cause of a strike. In the context of the Post strike, the language could only be interpreted as suggesting further violence. *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957) considered and rejected an argument similar to petitioners':

> The issue here is whether or not the conduct and language of the strikers were likely to cause physical violence. Petitioners urge that all of this abusive language was protected and that they could not, therefore, be enjoined from using it. We cannot agree. Words can readily be so coupled with conduct as to provoke violence. See Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571-572, 62 S.Ct. 766, 769-769, 86 L.Ed. 1031. Petitioners contend that the words used, principally "scab" and variations thereon, are within a protected terminology. But if a sufficient number yell any word sufficiently loudly showing an intent to ridicule, insult or annoy, no matter how innocuous the dictionary definition of that word, the effect may case to be persuasion and become intimidation and incitement to violence.

355 U.S. at 138. Petitioners' reliance on *Letter Carriers v. Austin*, 418 U.S. 264 (1974) is misplaced. *Austin* does not hold that petitioners are immune from liability by using Jack London's definition of "scab". Rather, it considered the use of the definition in a defamation suit, and found that in the context of a labor dispute, the

words could not be a representation of untrue facts. *Austin* was a defamation action whereas the case at bar is an action arising out of a violent strike. Furthermore, the holding in *Austin* leaves open the issue of whether the language might be actionable in other circumstances. 418 U.S. 264, 286. In any event, no claim has been made for recovery based on the language alone. Collier merely used the language as evidence of the International and Local's approval of the violence.

Collier presented sufficient evidence to prove that the agents of petitioner unions attacked and beat him, in an effort to discourage employees from working at the Post. Part of this proof was the evidence of the "Wanted" posters, which were properly admitted. The imposition of liability, and the proof of the unions' involvement does not offend the Federal Labor Laws, the United States Constitution, nor the decisions of this Court.

CONCLUSION

For the above reasons, the Petitions should be denied.

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No. 80-858

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INTERNATIONAL PRINTING AND GRAPHIC COMMUNICATIONS UNION, SOL FISHKO, LEO L. VOHSEN, *et al.*,

Petitioners,

v.

GERALD ROBERT COLLIER,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Virginia

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REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

I.

FEDERAL ISSUES PROPERLY RAISED

The particular ways and times in which the Federal questions were raised below were detailed in our Petition (at pp. 9-12) and are unaffected by the vague assertion by Respondent Collier that the Federal questions, admittedly raised in the trial court, were not properly raised in the Court below (Opp. 11-12).* Indeed, Collier

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* Consolidated Brief in Opposition to Petitions for Writ of Certiorari to the Supreme Court of Virginia, Nos. 80-858 and 80-859, referred to herein as "Opp." or "Opposition."

admits that the International Petition to the Supreme Court of Virginia referred to the Federal labor laws and decisions, but attempts to derogate those references as "short" and "casual" (Opp. 12), as though some particular length and depth, some specific ritualistic incantation, is required. This Court has clearly refuted any such notion.

> "No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67 (1928), quoted with approval, *Street* v. *New York*, 394 U.S. 576, 584 (1969).

See also, e.g., Braniff Airways v. *Nebraska State Board*, 347 U.S. 590, 599 (1954).

II.

GENERAL IMPORTANCE OF QUESTIONS PRESENTED

Every activity attributed to the International Union in the Opposition (pp. 8-9)—writing and speaking about the strike issues; attempting to settle the strike; making statements and editorials in opposition to violence; forwarding a classic definition of "scab"—is undeniably activity protected by the Federal labor laws, and also by the Free Speech and Supremacy Clauses of the United States Constitution.*

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* The Consolidated Brief in Opposition fails to acknowledge the separate and special status of the International Union and its officers, the Petitioners in this case, No. 80-858, under the facts of record and the governing law. Collier's references to the "Union's" (*see, e.g.*, Opp. 8) reflect his felt need to treat the two

It is revealing that Collier relies upon outmoded cases and doctrines (Opp. 16), and does not confront modern pre-emption requirements. *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443 (1921), and *Truax* v. *Corrigan*, 257 U.S. 312 (1921), for example, the only cases involving labor unions Collier cites in support of his conspiracy theories (Opp. 16-17), long antedate the enactment of the currently effective Federal labor laws. *See, e.g., United States* v. *Hutcheson*, 312 U.S. 219, 236 (1941) ("The Norris-LaGuardia Act was a disapproval of *Duplex Printing Press* v. *Deering* . . . ."). Further, *Youngdahl* v. *Rainfair*, 355 U.S. 131 (1957) (Opp. 15), itself holds that peaceful labor activities may *not* be enjoined—so also may they not be punished by damage awards. *San Diego Building Unions* v. *Garmon*, 359 U.S. 236, 247 (1959). Certainly the peaceful activities of these Petitioners were wholly separate from any of the alleged acts of violence; *Milk Wagon Drivers* v. *Meadowmoor Dairies*, 312 U.S. 287 (1941) (Opp. 15), is thus quite inapposite.

Likewise, Collier's assertion that "[t]he International's constitution in this case, *by itself*, establishes the agency relationship between petitioners and the violent union members" (Opp. 18-19; emphasis added) not only defies common sense in arbitrarily excluding all other facts of record, but also utterly disregards the pertinent Federal

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separate labor organizations as one and the same, which they plainly are not.

In addition, Collier finds it necessary to emphasize events which occurred long after the alleged assault; for example, that the International paid strike benefits to defendants who were not even indicted until four months after his alleged beating (Opp. 10) and pleaded guilty to misdemeanors in April 1977, over a year after the alleged assault upon him (Tr. 1657). The strike ended some time in April or May, 1977 (Tr. 286). Further, Collier finds it necessary to mischaracterize the record; for example, his Opposition refers to a "riot" (Opp. 5), but the referenced testimony characterized the event as a "rally."

labor law standards. *See, e.g., Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966).

Collier cites *Farmer* v. *Carpenters*, 430 U.S. 290 (1977), as though the case held that there was no risk that State damage actions would fetter the exercise of Federally protected rights (Opp. 14). Instead, the Court found that such a risk did indeed exist, requiring vacation of the State Court judgment; the Court declared that it had "responsibility in a case of this kind to determine the scope of the general rule [of pre-emption] by examining the state interests in regulating the conduct in question and the potential for interference with the federal regulatory scheme" (430 U.S. at 297) and to determine whether State Court jurisdiction may be "permitted where there is a realistic threat of interference with the federal regulatory scheme" (*id.* at 305).

Farmer rejects the pervasive contention of Collier that there is no limitation whatever upon the introduction of evidence of Union activities, however peaceful and protected, in a State Court trial upon a claim sounding in State law (Opp. 15-16). The concept that State law is never restricted if the claim is based upon State law is refuted also by *Linn* v. *Plant Guard Workers*, 383 U.S. 53 (1966), which limited recovery for the State tort of libel to a case in which a showing of actual malice was made. In this case, the trial court held that there was no evidence against the officers of the International to justify any judgment against them in their personal capacities (Tr. 1587-1588); but held the International liable, as though it were capable of acting other than through its officers.

Letter Carriers v. *Austin*, 418 U.S. 264 (1974), is cited to suggest that no pre-emption issue is presented here (Opp. 20-21). But the admission that Collier used "language as evidence" (Opp. 21) raises the issue whether a State Court judgment so prominentaly based

upon a Union's peaceful expression of views, indeed the *identical* views the expression of which was protected in *Austin*, "can be squared with the freedom of speech in labor disputes guaranteed under federal law" (418 U.S. at 266).

Likewise, Collier's only citation of *Mine Workers* v. *Gibbs*, *supra*, is to suggest that its teaching would tend to sustain the judgment below (Opp. 13). Quite to the contrary, *Gibbs* reversed a judgment based upon State law upon the ground that an improper standard had been utilized, reserving the question, unmistakably among those at the core of this case, whether "the conspiracy concept could be and was kept within limits proper to the application of state tort law under the pre-emption doctrine . . . ." (383 U.S. at 735). Finally, *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212 (1979), is cited to imply that it supports the tests for determining vicarious liability mobilized below (Opp. 18), when it expressly overruled reliance upon an international's failure to take certain steps in response to actions of the local as a basis for holding an international union liable (444 U.S. at 217-218), precisely the ground relied upon below and in the Opposition (Opp. 9).

Collier does not and cannot deny that many basic questions in Constitutional and labor law are presented by this case. Rather, his Opposition argues the merits of those questions. The fact remains that they are eminently worthy of adjudication by this Court; and that this case, with its many questionable rulings readily subordinating Federal law and policies to those of the State, is an appropriate vehicle for consideration and decision of those issues of general importance.

CONCLUSION

For the reasons stated above and in the Petition, the Petition for a Writ of Certiorari to the Supreme Court of Virginia in this case should be granted.

Respectfully submitted,

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